



Managing Performance Procedure & Guidance

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1 Introduction

- 1.1 This procedure and guidance is for all staff employed by the Authority. All employees have a contractual responsibility to be competent and perform their role in an acceptable way and to a satisfactory level, where this is not happening, the Authority is entitled to intervene with a view to improving the performance of an employee.
- 1.2 The purpose of managing unsatisfactory performance is to improve performance to an acceptable level. The aim is to avoid the need for warnings and potential dismissal. However, if performance does not improve and there are no mitigating factors, formal action may be taken.
- 1.3 The Authority has a responsibility in setting realistic and measurable standards of performance and for explaining these to staff. The Joint Performance and Achievement Review (JPAR) process should be used to set objectives, to make an employee aware of the activities and behaviours expected and address any developmental needs. Using this process effectively should reduce the risk of unsatisfactory performance.
- 1.4 The purpose of this guidance is to enable line managers to discuss with staff in an objective and systematic way any perceived failures to meet acceptable performance and identify actions for both parties in order to improve.
- 1.5 Further advice about the procedure may be obtained from line managers, HR, Unison representatives or a Staff Committee member.

2 Meaning of capability

- 2.1 'Capability' refers to an employee's skills, ability, aptitude and knowledge in relation to the job that he or she is employed to do. Lack of capability will in most cases lead to unsatisfactory performance which is likely to cause problems both for the line manager and work colleagues.
- 2.2 The feature to the lack of capability is that it is not always the employee's fault. Very few employees choose to perform their work badly, make mistakes, fail to complete tasks or have poor relationships with colleagues or customers. There is an element of personal responsibility required by the employee to keep their skills up to date or advise their line manager where support is required.
- 2.3 In the event that an employee is underperforming the manager should be prepared to examine the circumstances and give support to the employee to help him or her to improve to the standard of required competence, rather than disciplinary action.
- 2.4 Appropriate action should be taken promptly as soon as it is noticed that the employee is not performing certain aspects of his or her job satisfactorily. Delaying or worse doing nothing, may cause the performance problem to escalate.
- 2.5 One of the key distinctions between capability and conduct is that lack of capability will usually be outside the employee's direct control, while the same employee obviously will have control over his or her conduct at work. If an employee fails to come up to the required standard as a result of his or her own carelessness, negligence or idleness, this will not constitute incapability, but could be regarded as misconduct.
- 2.6 In the event of poor performance, it is important the manager try to identify the root cause of the problem and deal with it accordingly. Other possible causes of poor performance include:
- Inadequate or insufficient training
 - Poor systems of work or inadequate procedures
 - Tools or equipment that do not work properly or frequently break down
 - Poor quality supervision and/or support
 - Lack of understanding on the employee's part about his or her job duties and priorities
 - Unclear instructions
 - Work overload, causing stress and fatigue
 - Unrealistic targets or deadlines
 - Poor working relationships causing the employee worry and upset
 - Bullying and harassment
 - Physical or mental health
 - Personal problems that affect the employee's concentration

Clearly, other than the last two items on the above, they are within the control of the manager. The first step for the manager is to investigate the underlying cause of the employee's unsatisfactory performance through discussion with the employee.

- 2.7 If barriers to effective performance are identified, the manager will need to consider how these should be overcome or removed. The solution to the problem will flow from the cause, and may involve actions such as training the employee's manager in coaching the employee, instituting more effective two way communication, prioritising workload or rewriting procedures.
- 2.8 Where performance issues may be due to ill-health then a medical review should be progressed. It may be appropriate to refer the member of staff to Occupational Health or to the Authority's counselling service. This should be undertaken in liaison with the member of staff to assist in identifying any underlying health/welfare issues which may be contributing to poor performance
- 2.9 Where the employee has a disability as defined by the Equality Act 2010 that affects the performance of part of his or her job, the Authority may be under a duty to make reasonable adjustments that remove the disadvantage. This does not mean the Authority must tolerate poor performance. The purpose of a reasonable adjustment is to remove the barriers to satisfactory performance. Dismissal should only be contemplated when the cause of a poor performance cannot be mitigated by making reasonable adjustments.

3. Behaviour and attitude problems

- 3.1 Inadequacy in terms of behaviour and attitude is one of the most difficult issues a manager is likely to deal. Examples of this are where an employee regularly behaves in a way that is uncooperative, where their behaviour is antagonistic or where they display a lackadaisical attitude towards the work.
- 3.2 Such behaviour may be as a result of lack of capability or could be viewed as misconduct, depending on the circumstances. In either case, the manager must address the matter through a meeting with the employee.
- 3.3 In some cases it may be difficult to establish whether an employee's poor performance is due to inherent incapability or to lack of effort or negligence, and in some instances, there may be an element of both. The employee should be given the benefit of the doubt initially and line managers should opt to manage the performance of the employee rather than initiating disciplinary procedures.
- 3.4 It is important for the manager to focus on facts and actual examples of the employee's behaviour. The examples should be quoted in a neutral factual way with an explanation from the manager as to how the particularly behaviour was perceived, or how it affected others, and why such behaviour is unacceptable.
- 3.5 The employee may not be aware that their attitude, manner or behaviour is perceived in a particular way and the manager will need to treat the matter with sensitivity and patience in order to succeed in persuading the employee to accept the need for change.

4. Managing performance – source of procedure and guidance

- 4.1 There is no statutory procedure for handling an underperforming employee; however this process complies with the basic principles of fairness set out in the ACAS Code of Practice on disciplinary and grievance procedures. The frameworks within the Joint Performance and Achievement Review (JPAR) process enable the manager to objectively assess the employee's performance.
- 4.2 It is not necessary to wait until the annual JPAR review to commence the performance process. Performance issues should always be addressed in a timely manner.
- 4.3 One of the five potentially fair reasons for dismissal permitted under the Employment Rights Act 1996. Capability may relate to the employee's physical or mental capability, or to their performance.

5. Stage One: The initial response to poor performance

- 5.1 Where poor performance from an employee is observed they should receive feedback on this promptly. Feedback is normally provided by the line manager and should be given in private.
- 5.2 Feedback should be as objective as the circumstances allow and wherever possible, should be based directly on what the manager has observed. It should be factual and related to the work, not the personality of the employee.
- 5.3 The employee should have the opportunity to respond to the feedback and either dispute it or agree with the assessment. Provided the employee's performance does not present a risk to the Authority or to health and safety, the employee should be allowed the opportunity to take the feedback on board and continue with his or her work.
- 5.4 Where the issue is ongoing, as opposed to a one-off incident, the manager should inform the employee their performance will be monitored in the relevant area for a specified time to ensure that the necessary improvement takes place. This is an informal process which should take place in the course of normal day-to-day management.
- 5.5 The manager should keep brief notes regarding the employee's underperformance and what has been done to address the underperformance. A record will be necessary in case performance continues to be unsatisfactory despite measures taken. In line with the General Data Protection Regulations (GDPR), these records should be held confidentially and kept for no longer than necessary.

6. Stage Two: Action short of formal procedure

- 6.1 Where the feedback has no effect and the employee continues to underperform, the manager should seek advice from HR and arrange to hold a meeting with the employee to discuss the issue. The purpose of the meeting is to discuss a Performance Improvement Plan. (For more detailed guidance see Appendix A – How to structure a performance improvement meeting)
- 6.2 The manager should encourage the employee to identify any external or internal factors that may be affecting his or her performance. (see paragraph 2.7) If barriers to effective

performance are identified, the manager will need to consider how these should be overcome or removed. Further guidance is available from HR.

- 6.1 The employee's underperformance may be a straightforward competence issue that can be addressed through training or additional support, or they may be underperforming because of an excessive workload. Alternatively the employee may need to be more organised in their work or make more effort to perform.
- 6.2 Where performance issues may be due to ill-health then a medical review should be progressed. It may be appropriate to refer the member of staff to Occupational Health or to the Authority's counselling service. This should be undertaken in liaison with the employee to assist in identifying any underlying health/welfare issues which may be contributing to poor performance
- 6.3 Where the employee has a disability as defined by the Equality Act 2010 that affects the performance of part of his or her job, the Authority may be under a duty to make reasonable adjustments that remove the disadvantage. This does not mean the Authority must tolerate poor performance. The purpose of a reasonable adjustment is to remove the barriers to satisfactory performance. The line manager in conjunction with Head of HR will decide what the Authority can reasonably accommodate. Progress to dismissal should only be contemplated when the cause of a poor performance cannot be mitigated by making reasonable adjustments.
- 6.4 At the meeting it is important the manager outlines an agreed standard for the employee to meet. The standard should be as measurable as possible, consistent with the standard achieved by comparable employees and justifiable in terms of business need. The manager should also agree a timescale with the employee in which the standard must be met. Normally 3 months.
- 6.5 The agreed actions will be recorded in a Performance Improvement Plan. (see Appendix B – Performance Improvement Plan template)
- 6.6 The manager should arrange regular feedback sessions which should be constructive and acknowledge any progress made by the employee, while being clear about any areas where the expected improvement is not being made.
- 6.7 At the end of the agreed timescale the manager in conjunction with HR should review the progress that the employee has made. The employee's performance may have improved sufficiently so that no further action is required. Alternatively, the manager may consider that an extension to the review period is likely to result in the employee reaching the required standard with a reasonable time frame.
- 6.8 If it is clear to the manager that the employee has failed to improve or has not made sufficient progress to achieve the required standard, it may be appropriate to advance to a more formal stage and invite the employee to a formal performance management hearing.

7. Stage Three: Formal procedure

- 7.1 The purpose of a formal performance management hearing is to decide whether or not the employee's performance is so poor that they should be warned that a failure to improve sufficiently will lead to their dismissal.
- 7.2 The letter inviting the employee to the hearing should explain clearly the aspects of the employee's performance which is considered unacceptable and set out the possible consequences of the hearing.
- 7.3 The letter will make it clear that the employee will be given an opportunity to challenge the assertions made by the employer and to argue either that their performance is of the required standard, or that a further opportunity for improvement should be given without the need for a formal warning.
- 7.4 The hearing will follow the structure of a disciplinary hearing (See Disciplinary Policy and Procedures). The employee has a statutory right to be accompanied at the hearing by a trade union official, member of Staff Committee or a work colleague.
- 7.5 The most senior manager who has a detailed understanding of the employee's work should chair the hearing. Unlike a disciplinary hearing, where the hearing is chaired by a manager who has not been involved in the allegation into alleged misconduct, there is no requirement for a performance management hearing to be chaired by someone independent of the issue. The employee's manager or Head of Service will usually be the best person to judge the employee's performance.
- 7.6 At the hearing, the chair should review the history of the performance management process and invite the employee to comment on whether or not they accept the fact of underperformance. The employee will be asked whether or not they have any explanation for their failure to improve.
- 7.7 The chair will listen carefully to the points made by the employee and may decide that further investigation of particular factors is required before a decision is taken. Where appropriate the hearing can be adjourned for further investigation.
- 7.8 An HR Officer will attend the hearing and keep notes. The employee will be provided notes of the hearing on request.
- 7.9 If an employee fails to attend a notified hearing without giving an acceptable reason, it may be reasonable to proceed without them. They may be represented by a work colleague, a member of Staff Committee, or trade union official in their absence. If ill-health prevents attendance, but ill-health capability is not the reason for the absence, reasonable adjustments may be considered or the case can be heard in the absence of the employee. Medical information should be sought to identify if the employee is fit to attend.

7.10 At the conclusion of the hearing the chair should decide an outcome appropriate to the circumstances. Potential outcomes include:

- i. Performance is at an acceptable level
- ii. Further time is needed to allow the employee to improve, in which case a new review period should be set with appropriate support and supervision.
- iii. Performance has not reached the required standard, and a reasonable opportunity for improvement has been given, therefore a warning that if a given level of performance is not reached in an appropriate time frame, the employee will be dismissed.

7.11 One warning is sufficient prior to dismissal, provided the employee has been given an adequate opportunity to improve and their performance is sufficiently poor to be unacceptable. However, it is usual for at least two warnings to be given before dismissal is contemplated.

7.12 The period of warning during which improvement must be made should be fixed. The timetable will depend both on the nature of the underperformance and the nature of the work.

7.13 Depending on the circumstances, the warning may also specify that the improved performance must be maintained for a period of time once the required standard has been met, usually 12 months.

7.14 Where the employee makes sufficient improvement, the manager should hold a meeting with the employee at the end of the time allocated for improvement and confirm that the matter is closed. A note should be made of the outcome and written confirmation given to the employee.

8. Stage 4: Performance dismissal hearing

8.1 Where the employee fails to reach or maintain the required standard in accordance with the period of time set out in the warning, the Authority should invite the employee to a further formal hearing.

8.2 In case of the Chief Officers and Statutory Officers, the Head of HR will make referral to the Investigating and Disciplinary Committee, in accordance with the Disciplinary Procedure and Guidance for the Chief Executive, Statutory Officers, and Non-Statutory Officers.

8.3 The purpose of this hearing is to decide whether or not to dismiss the employee, and should be chaired by the Head of Service or Director. Dismissal for unsatisfactory performance will be unfair if the manager has not taken appropriate steps to give the employee an opportunity, and sufficient time, to improve to the standard required.

8.4 The hearing should follow the same structure as the first formal performance management hearing, and the letter of invite should set out the possible consequence of the hearing (i.e. dismissal and right to be accompanied).

8.5 At the hearing the employee should be allowed a full opportunity to explain any issues around their performance that may lead the chair to decide that dismissal is not appropriate.

- 8.6 If the chair is satisfied the employee has still not met the required standard despite being given a reasonable opportunity to improve, including support when appropriate, and it was made clear to the employee that failure to improve would lead to dismissal, the chair can choose to dismiss the employee.
- 8.7 The chair may issue a further Final Written Warning where further time is needed to allow the employee to improve, and a new review period should be set with appropriate support and supervision. When this is completed, the manager will re-assess performance and decide whether there has been sufficient improvement. If there has not been improvement, a further dismissal hearing should be arranged.
- 8.8 Where the stage has been reached where a decision to dismiss would be fair, it will also be fair to offer the employee the opportunity to accept an alternative role (where such a vacancy is available).
- 8.9 Where the Authority dismisses an employee on capability, in many cases a payment in lieu of notice is appropriate.

9. Appeal

- 9.1 An employee has a right of appeal against a sanction issued under stages 3 or 4 of this procedure. A request for an appeal should be sent in writing to the Head of HR and set out the grounds on which the employee believes that the decision was flawed or unfair. The request should be sent within ten days of the employee receiving written confirmation of the sanction imposed on them by the Authority.
- 9.2 An appeal hearing will be convened to consider the matter. It will be chaired by a manager more senior than the manager who made the original decision, or it is equally acceptable for another Head of Service to hear the appeal together with an HR practitioner. The employee will be entitled to be accompanied by a work colleague, or a trade union official or a member of Staff Committee.
- 9.3 At the hearing, the decision to impose the sanction will be reviewed and the employee will be entitled to make representations about the appropriateness of that decision.
- 9.4 The result of the hearing will be either to confirm the sanction, or substitute any outcome that was available at the hearing at which the sanction was imposed on the employee.
- 9.5 The outcome of the appeal will be confirmed to the employee in writing, explaining the grounds on which the decision was reached. The outcome of the appeal will be final.

(see Appendix C – Flowchart of performance management process)

10. Where performance issues have not been addressed in the past

- 10.1 It is not uncommon for managers to fail to address performance issues for a considerable period before deciding that action needs to be taken. Often, a manager will work around the employee's shortcomings. However, at some stage this position will become unsustainable.
- 10.2 There may be changes to the structure or ways of working that may mean that it is not possible for the manager to work around the issue.
- 10.3 Alternatively, a new manager may be appointed who is unwilling to overlook the issue, or where the old manager had lower standards of performance.
- 10.4 The manager's inaction is likely to have made the poor performance more entrenched than if the poor performance had been dealt with promptly. The employee will have the impression that their performance was at least acceptable and management must take some responsibility for this mistaken impression.
- 10.5 A manager can still address the employee's underperformance in these circumstances using the process set out in stages 1-4. The manager must inform the employee their performance is not acceptable and also apologise for the fact that the employee has been given the impression that all was well with their performance. It is important the manager clearly communicates their commitment to helping the employee succeed by providing appropriate support and training, and a reasonable amount of time to improve.

11. Where the employee raises a grievance

- 11.1 A common reaction to the beginning of a performance management process is for the employee to raise a grievance about the way in which he or she is being treated by their manager.
- 11.2 Where the grievance and the performance management process are related, it will generally be appropriate to deal with the grievance concurrently with the performance management process (ie the manager can deal with the employee's concerns in the course of the performance management process).
- 11.3 In extreme cases, it may be necessary to postpone the performance management meetings and investigate the grievance first. This might be where the employee has made a particularly serious allegation about the conduct of the manager in question, which outweighs any concerns about performance.

12. Ongoing performance issues

- 12.1 It is important to revert promptly to the formal procedure where an improvement in performance is only temporary.
- 12.2 Where an employee shows marked signs of improvement when under the close scrutiny of the performance management process, only to suffer a relapse when the process comes to an end, it is not necessary for the manager to begin the whole process afresh.

12.3 The manager is able to move straight to the point of inviting the employee to a formal hearing, which may result in a formal warning (see Stage Three), based on the view that the employee can clearly reach the required standard but once again is failing to do so.

12.4 At the hearing, the employee will be given the opportunity to give an explanation for the reason for the deterioration in performance.

12.5 The result of this hearing could be that the employer reissues the warning that a failure by the employee to maintain adequate levels of performance may result in their dismissal.

13. Relevant employment law and key PDNPA policies

Employment Rights Act 1996

Employment Relations Act 1999

Data Protection Act 2018

General Data Protection Regulation (2016/679 EU)

Acas code of practice on disciplinary and grievance procedures

Discipline and grievances at work: the Acas guide

Disciplinary Policy

Disciplinary Procedure and Guidance for the Chief Executive, Statutory Officers, and Non-Statutory Officers.

Appeals Policy

Joint Performance and Achievement Review (JPAR) process